

BOARD OF EQUALIZATION  
REVENUE ESTIMATE

---

PROPERTY TAX RULE 462.040  
CHANGE IN OWNERSHIP—JOINT TENANCIES

**Proposal**

The purpose of the proposed rule amendments is to clarify existing statutory provisions governing creation of “original transferor” status by amending the rule language to provide that co-owners may become “original transferors” by transferring to themselves in joint tenancy without requiring a third person among the transferees, or by transferring to a trust or will for the benefit of the other joint tenant. The proposed amendments also specify that the “original transferor” status terminates when the joint tenancy is terminated.

**Background, Methodology, and Assumptions**

Subsection (b) of section 65 of the Revenue and Taxation Code provides that the creation of a joint tenancy in which the transferors are among the transferees is excluded from change in ownership. In such a transfer, the transferees become “original transferors”, and a subsequent transfer or termination of a joint tenancy interest does not result in a change in ownership if the interest vests entirely or in part in an original transferor. When the last original transferor’s interest terminates, then there is a change in ownership of the entire property.

Currently, the rule provides that a transfer creating “original transferors” must include at least one person who is not a transferor, i.e., was not on title prior to the transfer. The requirement of an additional person among the transferees was added to the rule in 1999. The proposed amendments would eliminate this requirement as inconsistent with the statutory language that requires only that the transferors be “among” the transferees.

The proposal adds a sentence that clarifies that “original transferor” status terminates when the joint tenancy terminates. The current version of this subdivision provides that a transfer or termination of a joint tenancy interest does not result in a change if any original transferors remain on title. The proposed amendments clarify that if the joint tenancy itself is terminated, then the original transferor status of any of the joint tenants is also terminated.

The proposed amendments also provide that joint tenants become “original transferors” if they transfer to their respective trusts or wills for the benefit of the other joint tenant(s).

Joint tenants meeting the following conditions would be eligible for the "original transferor" status:

- 1) those who are not spouses, parents and children, or grandparents and grandchildren qualified for exclusions under other property tax statutes (under current law and the proposed amendments);
- 2) of those who are currently tenants in common (TCs), only TCs who will transfer their property into joint tenancy in order to have their interests go to each other upon any future transfer (due to death or dissolution) (under current law and the proposed amendments);
- 3) those who are individuals only, not corporations, partnerships, or other legal entities (under current law and the proposed amendments);
- 4) those who have executed trusts or wills directing that if they die the surviving joint tenant will acquire their respective joint tenancy interest (under the proposed amendments).

Surviving domestic partners who qualify for exclusion under proposed rule 462.240 are not included in this estimate.

If the property is owned by two persons in joint tenancy and there is a transfer from one joint owner to the other:

- 1) if they acquired the property together as joint tenants, then this is a 50% transfer since neither owner is an "original transferor" and the transfer from one to the other is a change in ownership of the transferor's interest (under current law and the proposed amendments);
- 2) if the joint tenancy was created by adding a second person to title, then
  - a) if the transfer is from the joint tenancy to the original (sole) owner, then there is no change in ownership (under current law and the proposed amendments);
  - b) if the transfer is from the joint tenancy to the second owner, then there is a 100% transfer (under current law and the proposed amendments);
- 3) if they acquired the property together as tenants in common, and subsequently changed title to joint tenancy, then there is no change in ownership (under current law and the proposed amendments);
- 4) if they are joint tenants who have executed trusts or wills directing that when they die the surviving joint tenant(s) will acquire their respective joint tenancy interest, then there is no change in ownership (under the proposed amendments).

The assessor is required to distinguish between joint tenants who are and are not "original transferors" as transfers occur; the assessor may not assume that all joint tenants are "original transferors".

There were more than 1.08 million reappraisable transfers statewide in 2000-01. Real property transfers where the transferors were joint tenants constituted 29 percent of all real property transfers in Sacramento County, the lone county that was able to provide details about joint tenants and transfers involving joint tenants. About 38 percent of these were transfers between/among joint tenants. The number of real property transfers can be further broken down as follows:

Transferors are joint tenants	$1.08 \text{ million} \times 29\% = 313,000$
Transfers between/among joint tenants	$313,000 \times 38\% = 119,000$

In Sacramento County, about 2.6 percent of all transfers between/among joint tenants are treated as a reassessable change-in-ownership. Excluded from this group are not only interspousal transfers, parent-child and grandparent-grandchild transfers—but those transfers where an original transferor is a transferee. Estimates from a handful of other counties range from under 1.5 percent to 20-25 percent. For the counties at the low end of the range, 90 percent of joint tenants are married joint tenants, and the community property with rights of survivorship form of ownership is rarely used. In other counties, married joint tenants comprise a smaller proportion of all joint tenants. Assuming for this estimate that the statewide percentage of reassessable transfers between/among joint tenants is double that of Sacramento County, i.e., 5.2 percent, the number of reassessable transfers between/among joint tenants is then:

$$119,000 \times 5.2\% = 6,209$$

According to various estate planning information sources including Nolo Press ([www.nolo.com](http://www.nolo.com)), about 70 percent of adults in the U.S. do not have a will. Based on information from other reference sources, this percentage may be as low as 50 percent. For the purposes of this estimate, it is assumed that 2/3 of adults in California do not have estate plans. After adjusting the number of reassessable transfers for the percentage of adults with estate plans, the number of transfers that would be potentially affected under the proposed changes is:

$$6,209 \times 1/3 = 2,070$$

It is likely that the bulk of the affected transfers would be transfers of principal places of residence. Based on reports from county assessors, the average assessed value of properties receiving the homeowners' exemption in 2002 was \$202,000. The median home price in December 2002, according to the California Association of Realtors, was \$331,000. The maximum total amount of affected value for a year can be estimated as:

$$[\$331,000 - \$202,000] \times 2,070 = \$129,000 \times 2,070 = \$267 \text{ million}$$

The revenue impact at the basic one percent property tax rate is \$267 million x 1 percent, or \$2.7 million.

However, it is possible that the actual number of affected properties in a year will be only a fraction of this number.

A transfer would be excluded under the proposed changes if:

- 1) the transferee is a joint tenant who would not have "original transferor" status except that the joint tenants transferred their joint tenancy interests to their respective trusts or wills for the benefit of the other joint tenant(s);
- 2) this eligibility for original transferor status is reported to the assessor.

If the change is made through a trust, then when the change in ownership to the trust is reported, the naming of the joint owner as the beneficiary must also be reported in order to get the original transferor status. Normally, property owned in joint tenancy would not be mentioned in a will since the owners usually have chosen this form of ownership because of its rights of survivorship provisions, and because these rights would override any designation made in a will. Upon death, the share of a joint tenant will automatically belong to the surviving joint tenant(s).

Since it appears unlikely that the average taxpayer would take, or even be aware of, these measures without the advice of a knowledgeable expert, the number of affected residential transfers in a year would be small, say, 25 percent of 2,070, or 517.

According to information provided by Santa Clara County, residential properties—single family residences, duplexes, triplexes, quadplexes, condominiums, and townhouses—constitute about 95 percent of the reassessable transfers. The total number of affected transfers is then 517 / 95 percent, or 544, and the number of affected non-residential property transfers is then 544 – 517, or 27.

In Santa Clara County, the average increase in assessed value for primarily non-residential properties is about double the average increase for residential properties.

The annual amount of affected value is then:

$$[\$129,000 \times 517] + [\$129,000 \times 2 \times 27] = \$73.66 \text{ million}$$

Assuming, conservatively, that the average annual reassessable transfer rate—i.e., for transfers to parties outside the joint tenancy—is seven percent, the reduction in assessed values (AV) for these properties over the first five years can be estimated as follows:

		Reduction in AV
Year 1		\$73,659,000
Year 2	x 93%	\$68,502,870
Year 3	x 93%	\$63,707,669
Year 4	x 93%	\$59,248,132
Year 5	x 93%	\$55,100,763

The estimated total reduction in assessed values over the first five years is then:

	Reduction in AV
Year 1	\$73,659,000
Year 2	\$142,161,870
Year 3	\$205,869,539
Year 4	\$265,117,671
Year 5	\$320,218,434

## Revenue Summary

The estimated revenue impact of the proposed amendments to rule 462.040 at the basic one percent property tax rate over the first five years is:

	Property tax at 1% tax rate
Year 1	\$736,590
Year 2	\$1,421,619
Year 3	\$2,058,695
Year 4	\$2,651,177
Year 5	\$3,202,184

## **Preparation**

This revenue estimate was prepared by Aileen Takaha Lee, Research and Statistics Section and reviewed by Mr. David E. Hayes, Manager, Research and Statistics Section. For additional information, please contact Aileen Takaha Lee at (916) 445-0840.

Current as of July 7, 2003